

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO. 359 OF 1994

Kashinath Bapurao Somase

Occ. Service, R/o. Aditya Kunj
Parshram Puriya Housing Societ,
Building No.B/2, Block No.1,
Panchavati, Nashik-3

.. Appellant
(Orig. Complainant)

Versus

1. Kondiram Deval Aher,

Occ. Cultivation,
r/o. Nagapur, Taluka Nandgaon,
District : Nashik

2. The State of Maharashtra

.. Respondents
(No.1 original accused)

Mr.A.R.Kapadnis for the appellant/orig.complainant

Mr. S.V. Kotwal for the Respondent-1

Mr. Swapnil S. Pednekar APP for the State/ Respondent-2

CORAM : SMT.RANJANA DESAI, J.

DATED : 6thOCTOBER, 2006

ORAL JUDGEMENT :-

1. The original complainant in Criminal Case No.1329 of 1988 filed in the Court of Judicial Magistrate, First Class, Nashik has filed this appeal being aggrieved by the judgement and order dated 14/07/1993 rendered by the Judicial Magistrate First Class Nashik acquitting first respondent-accused of the

charge under section 500 of the Indian Penal Code.

2. It is necessary to begin with the facts of the case. Complainant Kashinath Bapurao Somase and the accused are relatives. Sister of the complainant is married to the accused. Admittedly, the relations between the two are strained. There is civil litigation pending between the two pertaining to agricultural land. It is the case of the complainant that due to this litigation, the accused wrote a letter to him which is at Exh-48 containing defamatory statements. When the said letter was received at his house, he was not present. His daughter received it. His brother-in-law Parshuram Shete was present. Letter was read by his daughter and brother in law. Due to the contents of the said letter, he was defamed and his reputation was harmed. He, therefore, filed complaint against the accused in the Court of Judicial Magistrate, First Class, Nashik seeking his conviction in accordance with law for the offence of defamation.

3. In support of his case, the complainant examined himself, his brother-in-law PW-2 Parshuram Kondaji Shete and his wife PW-3 Kausalyabai Kashinath Somase. He also examined his friend PW-4 Narendra

Nivrutti Kokane. The complainant also examined PW-5 Haresh T. Gajjar, the handwriting expert. Accused pleaded not guilty to the charge. According to the accused, the complainant wants to grab his landed property and hence, he has falsely implicated him in this case.

4. After perusal of the record and evidence, learned Magistrate came to the conclusion that the complainant had failed to prove whether the accused has defamed him by writing letter Exh-48. The learned Magistrate in the circumstances of the case acquitted the accused. Being aggrieved by the said judgement and order, the complainant has filed the instant appeal.

5. I have heard at considerable length Mr. S.V. Kotwal for respondent-1, Mr. Swapnil S. Pednekar APP for the state/ respondent-2 and Mr. A.R.Kapadnis for the appellant/orig.complainant.

6. Mr. A.R.Kapadnis for the appellant/ orig. complainant strenuously contended that the learned Magistrate erred in acquitting the accused in the face of cogent and credible evidence led by the complainant. He submitted that PW-5 Haresh Gajjar, the handwriting

expert has clearly stated that letter Exh-48 is in the handwriting of the accused. PW-2 Parshuram Shete, PW-3 Kausalyabai Somase, wife of the complainant and PW-4 Narendra Kokane have stated that the letter was read by the daughter of the complainant and PW-2 Parshuram Shete. It was also read by PW-4 Narendra Kokane. Learned Counsel contended that therefore the offence of defamation was complete as on account of the defamatory contents of the said letter, the reputation of the complainant was harmed in the eyes of the witnesses who read the said letter. Learned Counsel further urged that offence of defamation is complete, the moment defamatory matter is communicated to some person other than the person concerning whom it is written. He submitted that this requirement is fulfilled in the facts of the present case and therefore the learned Magistrate should have convicted the accused. Learned Counsel urged that the impugned judgement and order is perverse and therefore this Court should set it aside and convict the accused in accordance with law.

7. Mr. S.V. Kotwal learned counsel appearing for the accused on the other hand submitted that no interference is necessary with the impugned judgement as the view taken by the learned Magistrate is

reasonable and a possible view. He submitted that there is no publication of the alleged defamatory matter. He further submitted that letter Exh-48 bears no date, no witness has stated on which date this incident took place. Therefore, complainant has not been able to prove that the complaint is filed within the period of limitation as per section 468 of Code of Criminal Procedure. Mr. S.V. Kotwal submitted that therefore the impugned judgement and order be confirmed.

8. I have given due consideration to the submissions advanced by the learned counsel for the complainant as well as the learned counsel for the accused.

9. It is an admitted position that the complainant and the accused are related to each other. It is also admitted that relations between the two are strained and there is civil litigation pertaining to agricultural land pending between the two. Letter Exh-48 which is on record contains defamatory material. Handwriting Expert PW-5 Haresh Gajjar has compared letter Exh-48 with letter dated 22/03/1983 which is at Exh-49 and opined that letter Exh-48 is written by the accused. The question is whether the offence of

defamation is made out.

10. PW-1 Kashinath Bapurao Somase has stated that when letter Exh-48 was received in his house, he was not present. His daughter and his brother in law Parshuram Shete (PW-2) read that letter and therefore, he was defamed. In the cross-examination, he has stated that he had filed the postal envelope on record. He had received defamatory letter through that envelope. He has admitted that the members of his family, except his wife, know reading and writing. Though the complainant has stated that he has filed the postal envelope, the postal envelope is not on record.

11. PW-2 Parshuram Kondaji Shete, brother in law of the complainant has stated that about 3-4 years ago he was sitting in the complainant's house. A postman delivered a letter in the complainant's house. The daughter of the complainant opened that letter. He also read the letter. According to him, the letter was containing defamatory statements. The daughters of the complainant were weeping. They told him that the letter had defamed their father. He identified letter Exh-48 in the Court.

12. PW-3 Kausalyabai Kashinath Somase, is the wife of the complainant. According to her, she was present in the house when letter Exh-48 was received. Her daughter, son-in-law, her nephew, Mr. Shetye were present in the house. She has stated that her daughter read the letter aloud. According to her, the letter defamed her husband.

13. PW-4 Narendra Nivrutti Kokane is the friend of the complainant. It is the evidence of this witness which in my opinion has damaged the prosecution case. He has stated that on the day when the postman dropped the said letter in the house of the complainant, the complainant was present whereas the complainant has stated that he was not present in the house. This witness has further stated that the daughter of the complainant read the letter. She started weeping after reading that letter. The letter contained obscene and defamatory statements about the complainant. The daughter read that letter aloud.

14. The prosecution has thus come out with a case that because the complainant was not in his house, the letter addressed to him was received by his daughter.

It was opened by her and read by her in loud voice and in the circumstances, the contents of the letter were communicated to others. It was because the complainant was not present that the persons present in the house had a chance to read it. This entire case is changed by PW-4 Narendra Kokane by saying that the complainant was present. If the complainant was present then there was no question of the daughter opening that letter and reading it aloud. It is pertinent to note that PW-2 Parshuram Shete and PW-3 Kausalyabai Somase have not stated whether the complainant was there or not. The prosecution case is therefore not clear as to whether in fact the complainant was present or not. A doubt is definitely created about the credibility of the prosecution case. Therefore the case that there was publication of the defamatory material which harmed the reputation of the complainant and lowered his image in the eyes of people must be held to be not proved.

15. In this connection, the learned Magistrate has rightly placed reliance on the judgement of this Court in Sukhdeo Vithal Pansare V/s. Prabhakar Sukhdeo Pansare and another 1974 CRI.L.J.1436 (V.80, C 527). It would be advantageous to quote the paragraph which the learned Magistrate has rightly reproduced in the

impugned judgement.

" What is publication ? Making a defamatory matter known after it has been written to some person other than the person for whom it is written is a publication in its legal sense. A defamatory matter must, therefore, be communicated to some person other than the person concerning to whom it is written. Communicating a defamatory matter to the person concerned only can not be said to be a publication."

16. In view of this legal position and in view of contradictory evidence of the prosecution witnesses it must be held that the complainant has failed to prove that the accused is guilty of the offence punishable under section 499 of the IPC.

17. I also find substance in the submissions of Mr. S.V. Kotwal that the complainant has failed to establish that the complaint is filed within the period of limitation. As per section 468 of Code of Criminal Procedure, complaint ought to have been filed within three years from the date of offence. The letter Exh-48

contains no date. None of the prosecution witnesses have stated the date on which the letter was received by them. Envelope in which the letter was received is not on record. That envelope could have shown when the letter was dispatched. It is therefore not clear as to when the offence was committed. It is therefore extremely doubtful whether the present complaint is filed within the period of limitation.

18. In my opinion, therefore no case is made out for interference with the impugned judgement and order. The view taken by the learned Magistrate is a reasonably possible view. In my opinion, on the evidence which was before him this was the only possible view. Appeal is therefore dismissed.

(SMT. RANJANA DESAI, J.)